

MINNESOTA  
CHAMBER of  
COMMERCE

September 18, 2012

Honorable Manuel Cervantes  
Office of Administrative Hearings  
PO Box 64620  
St. Paul, Minnesota 55164-0620  
Email: [rulecomments@state.mn.us](mailto:rulecomments@state.mn.us)

**Re: Minnesota Chamber of Commerce Comments on MPCA's Proposed Permanent Rules Relating to Greenhouse Gas Permit Requirements**

Dear Judge Cervantes:

The Minnesota Chamber of Commerce ("Chamber") submits these supplemental comments regarding the MPCA's Proposed Permanent Rules Relating to Greenhouse Gas ("GHG") Permit Requirements as published in the *Minnesota State Register* on July 9, 2012 and in response to the public hearing conducted on August 30, 2012.

The Chamber appreciates the opportunity to comment on the proposed rule. We submit the comments below for His Honor to consider while developing findings on the rules and the process associated with this rulemaking process.

**1. Minnesota Rules 7007.1450, subpart 2. Minor amendment applicability compliance period.**

The MPCA indicated during the August 30, 2012 public hearing that as a result of public comment they are changing the proposed language in this section from, "If a regulatory change results in existing insignificant activities no longer qualifying as such, the owners and operators must submit an application within **30 days** of the regulation's effective date to incorporate those emission units or activities into the facility's permit" (emphasis added) to "If a regulatory change results in existing insignificant activities no longer qualifying as such, the owners and operators must submit an application within **120 days** of the regulation's effective date to incorporate those emission units or activities into the facility's permit" (emphasis added). We support this change as it provides a more adequate time period for the affected source to submit a permit application after existing insignificant activities no longer qualify under that classification. We

had previously commented that the proposed 30 day period was too short. The new 120 day time period is more acceptable to a permittee seeking to comply with the rule.

**2. The MPCA's Permit Threshold Values should be adopted as Proposed.**

A number of parties at the public hearing on August 30, 2012 testified that they supported lowering the permitting threshold to a value less than that in the proposed rule. We disagree with this approach and support the permitting thresholds found in the MPCA's proposed rule for the following reasons:

- A. Lowering the threshold could inappropriately impact citizens and businesses that have heating equipment, even at a very low level, including residences, schools, hospitals, restaurants and apartment buildings. For Minnesota businesses, it would mean many facilities that currently do not need permits would need to obtain permits, including office buildings, warehouses, schools, hotels, churches, farms and small industrial facilities with minimal emissions. Lowering the emissions threshold would inappropriately and radically expand the requirement for a time-consuming, expensive, site-by-site permitting program of the Clean Air Act. The New Source Review program is intended to cover only the largest sources of emissions, not hospitals and schools. Other regulatory programs such as efficiency standards on appliances are a more appropriate tool to regulate greenhouse gas emissions from smaller sources without burdensome permits. Many such standards already exist to reduce emissions for smaller sources and facilities today.
- B. The proposed MPCA thresholds are consistent with Federal rules and permitting thresholds. This is important for Minnesota business viability and competitiveness (i.e., if Minnesota has lower permit thresholds than South Dakota, businesses may relocate to South Dakota to avoid another regulatory requirement).
- C. Lowering the permitting threshold could overwhelm the capacity of the MPCA to administer the New Source Review permit program. Lowering the threshold would increase the number of permit applications from a few per year on the largest Minnesota sources to hundreds per year. Indeed, one of the main reasons that the federal EPA established the Tailoring Rule's thresholds at levels that are higher than the statutory limits in the Clean Air Act is to avoid this absurd result.

**3. The Minnesota GHG Permitting Rule and the Minnesota Next Generation Energy Act do not have to be in complete agreement as they have different purposes.**

A number of parties at the public hearing on August 30, 2012 testified that they encouraged the MPCA to lower the permitting threshold to a value less than that in the proposed rule in order to fulfill the vision of the Minnesota Next Generation Energy Act. We disagree with this assertion from the perspective that these two regulatory actions have different purposes. The Minnesota GHG Permitting Rule is being proposed to implement the federal permitting rules for GHGs.

Lowering the permit threshold value in the permitting rule will serve only to radically increase the number of sources that must obtain a permit without any reduction in GHG emissions.

The Minnesota Next Generation Energy Act sets goals for achieving reductions in greenhouse gas emissions and established a process to achieve these ends. This process is completely independent of the permitting rules and should not be included as justification for lowering permitting thresholds.

4. **The MPCA has authority to be more stringent than EPA in setting permit thresholds and should exercise judgment in determining whether to deviate from the Federal thresholds.**

State and Federal law provides the MPCA with the authority to be more stringent than EPA when setting state rules. However, in this case, MPCA has provided adequate justification in the SONAR for proposing to adopt the same permit threshold values as EPA.

Thank you for the opportunity to provide comments on the proposed permanent rules relating to air emissions permit requirements. Please feel free to contact me if you have any questions at [mrobertson@mnchamber.com](mailto:mrobertson@mnchamber.com).

Sincerely,

A handwritten signature in black ink that reads "Mike Robertson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mike Robertson  
Consultant, Environmental Policy

## Osborn, Mary E (OAH)

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**From:** Holland, Jessica <jholland@mnchamber.com>  
**Sent:** Tuesday, September 18, 2012 1:42 PM  
**To:** \*OAH\_RuleComments.OAH  
**Cc:** Robertson, Mike  
**Subject:** MN Chamber of Commerce Correspondence - MPCA, Greenhouse Gas Permit Requirements  
**Attachments:** GHG Cervante Letter 9-18-12.pdf

Judge Cervantes:

Please see the attached correspondence from Mike Robertson, Minnesota Chamber of Commerce, regarding the MPCA's proposed permanent rules related to greenhouse gas permit requirements.

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**Osborn, Mary E (OAH)**

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**From:** Kurt Kimber <kimber.kurt@gmail.com>  
**Sent:** Tuesday, September 18, 2012 12:11 PM  
**To:** \*OAH\_RuleComments.OAH  
**Subject:** GHG Permitting Rules Written Comments  
**Attachments:** Kimber-GHG-Rules-Written-Comments.pdf

Hi,

Attached, please find written comments submitted by me regarding the MPCA's *"Proposed Amendments to Rules Governing Air Emissions Permits, Minnesota Rules (Minn. R.) Chapters 7005, 7006 – Greenhouse Gas Permitting Rules ("Tailoring" or "GHG" Rules) and 7011."*

Please acknowledge timely receipt of these written comments.

Thank you,

Kurt Kimber  
952-876-3331 (w)

## **GHG Permitting Rules Written Comments**

**Kurt Kimber, 18 September 2012**

The following are written comments submitted by Kurt Kimber regarding the MPCA's *"Proposed Amendments to Rules Governing Air Emissions Permits, Minnesota Rules (Minn. R.) Chapters 7005, 7006 – Greenhouse Gas Permitting Rules ("Tailoring" or "GHG" Rules) and 7011."*

### **Synopsis:**

The MPCA's statement of need and reasonableness (SONAR) for the above proposed rules fails both the need and reasonableness criteria.

- I will argue the MPCA's SONAR fails to show need for their proposed rules because the MPCA only considers the previous threshold (100 tons per year or TPY) and the federal EPA's threshold (100,000 TPY) of CO<sub>2</sub>e (CO<sub>2</sub> equivalent) air emissions as the permit requirement threshold. A new threshold between these two values that would subject 99% of Minnesota's CO<sub>2</sub>e emissions would be a very effective solution, but the MPCA fails to consider such a new threshold.
- I will argue the SONAR is not reasonable because it fails to consider a reasonable threshold such as the 99% threshold mentioned in the above bullet.
- I will argue that MPCA's SONAR is not reasonable because the proposed rules are wholly at odds with the Next Generation Energy Act of 2007.

I will also state why I believe it is extraordinarily important and urgent that the MPCA adopt permitting rules that put the State on a trajectory to meet the Next Generation Energy Acts goals.

### **Failure to demonstrate the need for the proposed rule changes**

The MPCA fails to demonstrate the need for their proposed Greenhouse Gas (GHG) Permitting Rules change because they fail to consider other than 100 tons per year (TPY) (Minnesota's current air emissions permit threshold) or 100,000 TPY (the current Federal EPA permit threshold) of carbon dioxide equivalent (CO<sub>2</sub>e) emissions as the threshold requiring an air emission permit. Note that the MPCA's proposed threshold is 1000 times larger than the previous threshold.

In its GHG SONAR the MPCA states in the "Rule-by-Rule Analysis: Statement of Need for the Proposed Rules" section, under the "Greenhouse Gas Rules" subsection:

As a result, the MPCA must amend its permitting rules to avoid requiring small sources to obtain operating permits.

This statement is not correct because the MPCA fails to consider permit thresholds of other than 100 TPY. During the August 30, 2012 public hearing for this proposed rule change, it was clearly established by testimony of MPCA staff that the State of Minnesota can choose a permit threshold below the Federal EPA threshold of 100,000 TPY.

The MPCA should derive a threshold that would subject 99% of Minnesota's CO<sub>2</sub>e emissions to the air emission permit requirement; I will refer to such a threshold as the "99% threshold". Should the MPCA suggest that such a 99% threshold could not be reasonably derived, I will respond that I flatly reject that notion as not a serious argument; this is clearly the type of task that the MPCA must be capable of executing.

#### **Failure to demonstrate the reasonableness of the proposed rules changes**

First, the proposed rule changes are not reasonable because they only consider two air emission permit thresholds and fail to consider a reasonable 99% threshold, all of this described in the failure-to-demonstrate-need section above.

Second, the proposed rules are unreasonable because they are wholly inconsistent with Minnesota's Next Generation Energy Act of 2007. The Next Generation Energy Act is one of the nation's leading energy blueprints and a model of what must be done to avoid runaway climate change.

Below are some aspects of the Next Generation Energy Act which are closely related to CO<sub>2</sub>e emissions in Minnesota and thus very relevant to the MPCA's proposed GHG Permitting Rules.

#### **Key goals of Minnesota's Next Generation Energy Act of 2007**

(<http://www.mwalliance.org/policy/minnesota-policy-info>)

- Effective Aug. 1, 2007, the law calls for cutting the state's greenhouse gas emissions to 15 percent below 2005 base levels by 2015, 30 percent by 2025 and 80 percent by 2050.
- Reduce per capita use of fossil fuels by 15 percent by 2015, and to derive 25 percent of the total energy used in the state from renewable power sources by 2025.

The Next Generation Energy Act also mandates building performance standards known as "Sustainable Building 2030". These building standards state that:

Sustainable Building 2030 energy-efficiency performance standards must be firm, quantitative measures of total building energy use **and associated carbon dioxide emissions** per square foot for different building types and uses that allow for accurate determinations of a building's conformance with a performance standard.

The performance standards should be designed to achieve reductions equivalent to the following reduction schedule, measured against energy consumption by an average building in each applicable building sector in 2003:

- 1) 60 percent in 2010
- 2) 70 percent in 2015
- 3) 80 percent in 2020
- 4) 90 percent in 2025

The Next Generation Energy Act also called for the creation of the Minnesota Climate Change Advisory Group (<http://www.mnclimatechange.us/MCCAG.cfm>). The MPCA was a key participant of

and facilitator for this group. In the executive summary of this group's report, the Policy Recommendation named CC-1 "GHG Inventories, Forecasting, Reporting, and Registry" was *unanimously* recommended.

Summarizing the above points, the Next Generation Energy Act's GHG reduction goals, its Sustainable Building 2030 reductions of carbon dioxide emissions and the Minnesota Climate Change Advisory Group's unanimous Policy Recommendation to catalog GHG emissions all depend on being knowledgeable and capable of regulating the state's CO<sub>2</sub>e emissions. In light of these legislative requirements and recommendations, it is not only not reasonable, but irresponsible for the MPCA to propose a GHG permit threshold of 100,000 TPY.

In order for the MPCA to support the Next Generation Energy Act, it must be knowledgeable of the State's major CO<sub>2</sub>e emitters. There is considerable lead time associated with gathering this information and this is another important reason that the MPCA must adopt the 99% threshold.

#### **Recommendation for MPCA's GHG Permitting Rule Change**

It would be reasonable and responsible for the MPCA to derive a GHG Permit threshold such that 99% of the State's CO<sub>2</sub>e emissions would require an air emission permit and use this 99% threshold as the GHG permit threshold in the proposed rule changes.

At the August 30, 2012 public hearing for these proposed rules changes, MPCA staff stated that approximately 130,000 sources would require a permit if the threshold was set at 100 TPY of CO<sub>2</sub>e emissions. Deriving a 99% threshold would dramatically reduce the number (likely 1/100<sup>th</sup> of the MPCA's 130,000 number) of air emission permits required compared to the 100 TPY threshold while subjecting 99% of the state's CO<sub>2</sub>e emissions to the air emissions permit requirement. This proposal would be a very effective and efficient solution to regulating the State's CO<sub>2</sub>e emissions.

#### **Why is having the MPCA responsibly regulate CO<sub>2</sub>e emissions so vitally important?**

The answer is simple. At this moment planet earth is on the brink of runaway climate change. We must, as a civilization, act now to have any hope of avoiding this unmitigated catastrophe. At this moment civilization hangs in the balance, depending on whether humanity acts to radically reduce anthropogenic CHG emissions or not.

Scientists have established that the planet is warming the fastest at the poles. We see evidence of this with record low amount of sea ice at the North Pole. As this ice melts, less of the solar radiation that falls on the Arctic region is reflected back into space and more of this solar radiation is absorbed into the Arctic Ocean, warming this water. This warming water causes more ice to melt, establishing a vicious cycle. I expect most people reading these written comments will witness the first summer in over 600,000 years where the Arctic Ocean becomes ice-free.

Similarly, permafrost in the northern latitudes is beginning to melt (<http://www.nytimes.com/2011/12/17/science/earth/warming-arctic-permafrost-fuels-climate-change-worries.html>). Melting permafrost releases methane, a GHG 22 times more potent than CO<sub>2</sub>. This methane causes more warming which causes more permafrost to melt and release more methane – another vicious cycle. The NY Times article referenced above cites a scientist's estimate that there is 2.5



times more carbon sequestered in the permafrost than there is currently in the earth's atmosphere – easily enough to slam us into runaway climate change.

Should runaway climate change occur, any actions by humanity to counter climate change will be absolutely crushed by Nature's immensity.

CO<sub>2</sub>e emissions are arguably the most important pollutants that the MPCA regulates. If earth enters runaway climate change, harm done by mercury, for instance, will be utterly dwarfed by the harm wrought by climate change on civilization and the biosphere; mercury pollution will be an afterthought.

Respectfully submitted,

Kurt Kimber  
4811 35<sup>th</sup> Ave S  
Minneapolis, MN 55417

**Osborn, Mary E (OAH)**

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**From:** Paul Densmore <pmdensmore@gmail.com>  
**Sent:** Tuesday, September 18, 2012 10:13 AM  
**To:** \*OAH\_RuleComments.OAH  
**Subject:** written testimony for Aug. 30th hearing on GHGs by Judge Cervantes  
**Attachments:** GHGhearingteistimony.docx

Hello,

Please find attached my written testimony for GHG rule hearing held by Judge Cervantes on Aug 30th.

Thank You,

Paul Densmore

Paul Densmore  
3435 Colfax Ave S. #102  
Minneapolis, MN 55408  
(678) 381-3341

September 12, 2012

Honorable Manuel J. Cervantes  
Administrative Law Judge  
Office of Administrative Hearings  
PO Box 64620  
St. Paul, MN 55164

Subject: Written Testimony for GHG rule change hearing held August 30th, 2012

Dear Judge Cervantes,

Thank you for taking the time to hold the hearing on the proposed permanent rule changes on the implementation of the EPA standards on GHGs by the MPCA. In this written testimony I would like to reiterate the some of the points made in the testimony during the hearing and add some information to allow you to find as reasonable the adoption of more stringent GHG standards by the MPCA.

Climate change is already happening as seen by the record heat, drought, and extreme weather events like the flooding in Duluth. Climate scientists, like James Hansen, predicted we would see events like this 30 years ago, and he continues to predict it will get much worse. Overwhelming scientific consensus concurs with Dr. Hansen that anthropogenic GHGs are the main cause. Minnesota state legislators recognized this as well and passed a bipartisan bill signed by then Governor Tim Pawlenty to set goals of reducing GHGs by 15% below 2005 levels by 2015, 30% below 2005 levels by 2025, and 80% below 2005 levels by 2050.

The EPA GHG standard of 100,000 tons per year (tpy) required for a mandatory EAW was raised from the initial 250 tpy. According to the testimony by MPCA staff the primary reason for the increase was that the lower standard would require too much money in staff time to implement and would be too onerous for smaller emitters. Though I can appreciate the budget constraints placed on the MPCA and smaller businesses, it is not reasonable to expect to meet the goals mandated by the legislature listed above unless a more stringent standard is enacted. Once the more stringent standard is in place then it will require the legislature to fund the goals they have already committed to.

The other concern I heard voiced by the MPCA staff at the hearing was the potential for problems with being able to issue permits if Minnesota's standard deviates from the EPA standard. The MPCA staff did acknowledge that a more stringent standard should not impact their ability to be continue to issue permits under the guidelines of EPA. Furthermore, there is

ample precedence for states including Minnesota to require more stringent standards than Federal rules. One notable way in which Minnesota was ahead of the curve was the Minnesota Clean Indoor act of 1972 where the state protected people from secondhand smoke even before the link between secondhand smoke and cancer was widely accepted. There is certainly much more evidence of the disastrous effects of GHGs to warrant more stringent standards as a reasonable expectation. Many other examples of more stringent requirements could be given.

The MPCA could not provide any information as to the cost and effect of lowering the standard from 100,000 tpy to a lower value. The Sierra Club, however, has done an analysis and determined that lowering the the proposed standard from 100,000 tpy to 10,000 tpy would account for 98% of GHG emissions while eliminating approximately 75% of the pool required to comply at a 250 tpy standard. This would seem to be a reasonable compromise that would adhere to the intent of the new standards of measuring GHGs, while recognizing fiscal realities

In conclusion, climate change is already happening due to GHGs and we can only attempt to reduce the disastrous impact. A reasonable compromise to the proposed standard achieving maximum coverage of CO2 emitters with the most fiscal responsibility would be to enact a more stringent standard of 10,000 tpy.

Sincerely,

Paul Densmore